

B. J. HOLMES

IBLA 80-240

Decided April 4, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting untimely filed mining claim location certificate MCA-MT-06.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Determination of Validity -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim, located after Oct. 21, 1976, is properly deemed abandoned and void.

A question as to the date of location of a mining claim is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(h).

APPEARANCES: William J. O. Holmes, Esq., San Mateo, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

B. J. Holmes has appealed from a decision dated November 30, 1979, by the Montana State Office, Bureau of Land Management (BLM), which rejected certificates of location for 11 mining claims because they were not filed within 90 days of the date of location as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The appeal is limited to only one of the rejected claims, the Mother McCree claim, the certificate of location for which was received by BLM on October 18, 1979. Entered on the certificate of location for this claim is the recitation that a notice of location was posted on the discovery point of the claim on July 2, 1979. The word "August" appearing just before the word "July" has been crossed out. Both months appear to have been written by the same party. Appellant states on appeal that August 2 is in fact the correct date, not July 2, as set forth in the certificate. Appellant states that he inadvertently crossed out the August date and entered a July date.

[1, 2] The date on the certificate of location, July 2, 1979, contains no ambiguity and the certificate was therefore properly returned to appellant as having been untimely filed. To consider, as appellant urges, August 2 as the operative date, would contradict the date clearly entered on the face of the document, and the definition of that date in 43 CFR 3833.0-5(h) which provides: "'Date of location' or 'located' means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated."

The Revised Code of Montana, provides in applicable portion as follows:

50-708. (7372) Amended location. A locator or claimant may at any time amend his location, and make any change in the boundaries which does not involve a change in the point of discovery as shown by the discovery shaft, by marking the location as amended upon the ground, and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate. [enacted 1907] [Emphasis added.]

The notice of location was recorded with the county clerk of Lewis and Clark County on August 2, 1979, at 11:50 a.m. While it is not inconceivable that the claim was located that very same day, as alleged by appellant, it is more likely that July 2, 1979, is the correct date of location. In any event, appellant, in the light of the cited Montana law, is on the horns of a dilemma. If he asserts that he changed the month from August to July prior to recordation with the county clerk, he is in noncompliance with the provision that "[a] defect in a recorded certificate of location may be cured by filing an amended certificate." <sup>1/</sup> If, on the other hand, he changed the month

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<sup>1/</sup> In essence, appellant would be conceding that the certificate was defective because it had the incorrect date of location when it was recorded with county clerk.

after recordation with the county clerk, the filing with BLM, pursuant to FLPMA, would not constitute "a copy of the official record of the notice or certificate of location of the claim \* \* \* filed under state law." 43 CFR 3833.1-2(a). In either circumstance, the mining claim properly was deemed abandoned and void under 43 U.S.C. § 1744 (1976). We are constrained to follow the clear terms of the regulation. Cf. P & S Mining Co., 45 IBLA 115, rendered January 15, 1980.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

